

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.16591 of 1998

Between:

Dr. Kanchumurthi Surya Prakasa Rao, S/o. Suryanarayana, Medical Officer, Golden Jubilee Port Hospital, Saligramapuram, Visakhapatnam.

..... PETITIONER

AND

1 The Board of Trustees of Visakhapatnam Port Trust, rep, by its

Chairman, Port Area, Visakhapatnam.

2 The Chief Medical Officer, Golden Jubilee Port Hospital,

Saligramapuram, Visakhapatnam.

3 Dr. N.K. Viswanadha Raju, Medical Officer, Golden Jubilee Port

Hospital, Saligramapuram, Visakhapatnam.

4 Dr. B. Maheswara Rao, Medical Officer, Golden Jubilee Port

Hospital, Saligramapuram, Visakhapatnam.

5 Dr. G.Bala Parameswara Rao, Medical Officer, Golden Jubilee Port

Hospital, Saligramapuram, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased, in the interest of justice, to issue an order or writ more particularly the one in the nature or writ Certiorari, by calling for the records relating to and connected with the proceedings No. A/MED/PC/KSPR/98/7124 Dt, 30.5.1998 of the 2nd respondent and quash or set aside the same and further direct the respondent to treat and consider the petitioner as senior to Respondents 3 to 5 as a Medical Officer and on that basis consider his case for promotion to higher posts.

Counsel for the Petitioner: Mr.NUTY RAM MOHAN RAO

Counsel for Respondent Nos.1&2: Mr. K.SRINIVASA MURTHY

Counsel for Respondents 3 to 5 : Mr.G.VASANTHA RAYUDU

The Court made the following :

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ORDER:

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This writ petition is filed seeking a Writ of Certiorari quashing the Proceedings of the 2nd respondent dated 30-5-1998 and consequently to direct respondents 1 and 2 to treat the petitioner as senior to respondents 3 to 5 (unofficial respondents) in the cadre of Medical Officer and on that basis consider his case for promotion to higher posts.

It is the case of the petitioner that after obtaining MBBS degree from Andhra University, he worked as Research Officer in the Ministry of Health, Government of India. At that time, the Visakhapatnam Port Trust issued a notification dated 25-5-1984 inviting applications from eligible candidates for recruitment of following posts in the Hospital/Dispensaries maintained by it.

a) Medical Officer (General Surgery) No.of posts – 1

b) Medical Officer (Obs. & Gynac) No.of posts – 1

c) Medical Officer (Anesthesia) No.of posts – 1

d) Medical Officer (Gen.Duty) No.of posts – 2

Out of the above five posts, one was reserved for the candidate belonging to Scheduled Caste community. He was one of the candidates, who responded to the notification and applied for the post specifying that he belongs to SC community. He was interviewed on 8-10-1984 in the morning along with other SC candidates. After all the reserved candidates were over, the respondent-Port Trust took up separately the selection for General Duty Medical Officers. Prior to this, the Port Trust took up selections for the posts of Specialist Medical Officers on 28-9-1984. Along with him, the unofficial respondents were also selected as General Duty Medical Officers. He

joined the post on 3-12-1984 and since then he has been functioning continuously as Medical Officer. Respondents 3 to 5 joined duty on 20-10-1984, 19-10-1984 and 29-10-1984 respectively. According to the petitioner, in the Notification No.2/94 two posts of General Duty Medical Officers and three posts of Specialist Medical Officers were notified, of which one was reserved for SC candidate. It is the specific case of the petitioner that in the said recruitment, he alone, who belongs to Scheduled Caste, was selected; whereas, the unofficial respondents were appointed without any notification and without any applications being invited. No public office can be filled up without advertisement. When two posts are advertised and one post is reserved for SC category, it is but fair and natural that SC candidate should be shown as senior to the other; whereas, the unofficial respondents were shown as seniors to him. The Port Trust has to necessarily follow or fix up appropriate principles and adhere to the same while fixing the seniority. It is rather unfortunate that the Port Trust is treating and considering the unofficial respondents as seniors to him, which was not based on any principle. Earlier, the Port Trust had conceded the right of seniority in his favour and one Dr. (Mrs.) Gowri Kumari, Medical Officer, was shown against SI.No.14, though she was appointed against SI.No.23. Therefore, from this itself it is seen that the Port Trust has not correctly maintained the roaster for Medical Officers.

A detailed counter affidavit has been filed on behalf of respondents 1 and 2 denying the allegations made by the petitioner and stating that in the interviews conducted on 28-9-1984 for Specialist posts in General Surgeon, Gynecology and Anesthesia, three candidates were selected to be appointed against roaster points 9,13 and 14 and all the three candidates were given offer of appointment letter on 19-10-1994. The petitioner being not a Specialist was not called for the said post. The Medical Officer Class I (Genl.duty) interviews/selection was conducted on 8th, 9th and 10th October,1984. Fifteen candidates were interviewed and the petitioner was one among them, who was interviewed on 8-10-1984 and final report was made with regard to the selection on 10-10-1984. At that point of time, there were only two vacancies for MBBS General candidates and there was no SC vacancy. So, the unofficial respondents were first posted as General Duty Doctors and after vacancy arose in SC reserved quota, the petitioner was accommodated in that point. The petitioner's name was approved for appointment against point No.14 of SC quota. The Port Trust followed the appointment as per SC/ST Brochure and it has grouped

Class I Officers, who are in the same scale as per the guidelines in the Brochure, but the seniority was being maintained for each category i.e. for general candidate and reserved candidate. The Port Trust has not violated any of the Rules or Regulations. In fact, the petitioner was shown as SC candidate at roaster No.14. Therefore, the allegation that the seniority position was not known and the seniority list was not prepared by the Port Trust is not correct. In fact, earlier also, the petitioner made representation and it was rejected on 30-5-1988, since he raised such a contention after 13 years. Further, earlier while comparing his case to that of Dr. (Mrs.) Gowri Kumari, he filed a representation and after considering the same, he was shown above the said Dr. (Mrs.) Gowri Kumari in the seniority list of Medical Officers. It is also stated that for all the Class I Officers in various Departments, common seniority roaster was maintained. In fact, the petitioner has submitted a representation on 27-7-1991 and requested to revise the duty roaster etc., showing his name as senior to Dr. (Mrs.) Gowri Kumari. In the representation, the petitioner never questioned the seniority of respondents 3 to 5 and also never claimed that he is senior to them. Had he been really aggrieved by the seniority list dated 15-7-1985 communicated to him, he should have submitted a representation questioning the said seniority list. But, such a course of action was not adopted. Therefore, the petitioner is estopped from claiming seniority at this stage.

Learned counsel for the petitioner strenuously contended that when there was only one post reserved for Scheduled Caste candidates among the five posts, the petitioner's seniority ought to have been fixed above respondents 3 to 5, but such a course of action was not adopted and the petitioner was given roaster point No.14, which was not correct; whereas, the unofficial respondents were given roaster points above the petitioner, which is arbitrary and illegal. The respondent-organization has not maintained the roaster register for Class I Officers of all the Departments put together.

Learned counsel for respondents 1 and 2 reiterated the same contentions as were raised in the counter affidavit.

It is not in dispute that the petitioner was selected along with others in pursuance of the Notification dated 25-5-1984 issued by the respondent-Port Trust. However, in the said notification, which of the posts was reserved was not shown. Admittedly, three Specialists were recruited against the three vacancies and against the two General Duty Medical Officer posts, the petitioner was one of the candidates

selected. Apart from this, unofficial respondents were also appointed as General Duty Medical Officers. Their source of appointment is not in dispute in this case. It is brought in the counter that no vacancy in the reserved category among the General Duty Medical Officers was available as on the date when the petitioner was appointed. However, when such a vacancy arose thereafter, the petitioner was adjusted against roster No.14. The petitioner immediately did not raise any dispute. Only on 27-7-1991 for the first time he made a representation comparing his case with that of one Dr. (Mrs.) Gowri Kumari, who was also a General candidate and her appointment was made against point No.23 and she secured 64 marks and the petitioner is a reserved candidate, who secured 63 marks and junior to Dr. (Mrs.) Gowri Kumari. In fact, the petitioner was appointed against point No.14, which is earmarked for Scheduled Caste candidate. Except comparing himself with that of Dr. (Mrs.) Gowri Kumari, he has not made any other grievance. Even by that time, the unofficial respondents were shown above the petitioner. The petitioner did not raise any objection for the same. After 1991, again the petitioner seems to have filed a representation on 30-9-1996 for revision of the seniority list and the same was rejected saying that the seniority was settled long back, through the impugned proceedings. The petitioner having fully known as to his position in the seniority list of Class I Medical Officers in the respondent-Port Trust has made a representation way back on 27-9-1991 and the same was considered and he was placed above Dr. (Mrs.) Gowri Kumari and after more than 5 years thereafter, he made a representation in the year 1996, which was turned down.

This Court called for the original roster of Class I Medical Officers maintained by the respondent-organization. Learned counsel for the petitioner also looked into the said register. Though he tried to make out a point that the roster points are not being followed properly and the 40 units roster is being maintained, whereas after 1995 the Port Trust is supposed to follow roster points of 200 units afresh. Learned counsel for the petitioner contended that each Department is given separate roster points; therefore, the roster point given to the petitioner i.e. Point No.14 by showing the unofficial respondents above him is also illegal.

The petitioner is in the habit of raking up the issue of seniority in piecemeal as and when he was willing. When he raised a dispute comparing himself with one

Dr. (Mrs.) Gowri Kumari, nothing prevented him from raising the same issue comparing himself against the unofficial respondents also. Having got relief against Dr. (Mrs.) Gowri Kumari, he again waited for more than 5 years and gave a representation in 1996, which was rightly turned down by the authorities through the impugned order saying that the seniority has already been settled long back. The petitioner is not entitled for any relief in this writ petition. The writ petition is devoid of merits and liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

-12-2004

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Chairman, Board of Trustees of Visakhapatnam Port Trust,

Port Area, Visakhapatnam.

2 The Chief Medical Officer, Golden Jubilee Port Hospital,

Saligramapuram, Visakhapatnam.

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